

Green Guide Regulatory Review
16 CFR Part 260, Comment
Project No. P954501

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I. OVERVIEW

The Center for Resource Solutions (“CRS”) is pleased to submit comments on the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims (the “Green Guides”). CRS participated in and submitted comments on the January 8, 2008, Workshop on Carbon Offsets and Renewable Energy Certificates (the “Workshop”). These comments are submitted in supplement to those comments.

CRS administers the Green-e[®] Energy and Green-e[®] Climate certification programs, through which we verify and certify sales of renewable energy and greenhouse gas emissions reductions (also commonly known as “carbon offsets,” or “offsets”) in voluntary markets.¹ In addition, companies purchasing or generating sufficient quantities of Green-e[®] certified renewable energy are licensed through our Green-e[®] Marketplace program to use the Green-e[®] logo in company collateral and advertising materials to promote their commitment to renewable energy.²

CRS thanks the FTC for continuing to refine its Green Guides. We support expanding the existing guidance to address issues arising in the context of renewable energy and carbon offsets. We would also like to take this opportunity to address a few specific points raised in comments submitted on the Workshop by other parties.

II. COMMENT ON THE GREEN GUIDES

A. Continuing Need for Green Guides

We believe the Green Guides protect consumers by encouraging companies to substantiate claims about the environmental benefit(s) of their company practices and/or the products and services they sell.

¹ CRS launched the Green-e[®] Climate certification program on February 8, 2008.

² The Green-e[®] Energy, the Green-e[®] Climate, and Green-e[®] Marketplace programs are described in detail by CRS in its comments submitted on the Workshop. CRS Deputy Director and Director of Certification and Analysis Jennifer Martin also spoke about these programs at the Workshop.

Key principles articulated in the guides are that:

- environmental claims must be clear and prominent,
- companies must have a reasonable basis for substantiating all express and implied claims as understood by reasonable consumers,
- reasonable consumers may understand claims on a product to apply to both the product and its packaging unless otherwise specified,
- claims of a scientific nature must be backed up with competent scientific evidence, and
- third-party verification and certification can give companies a reasonable basis for environmental claims.

These principles provide an essential framework for evaluating the legitimacy of environmental claims, including those by companies selling and purchasing renewable energy and carbon offsets.

B. Proposed Revisions of the Green Guides to Address Claims about Renewable Energy and Carbon Offsets

We believe it would be appropriate for the FTC to expand the Green Guides to specifically address the sale and purchase of renewable energy and carbon offsets, and to clarify certain issues associated with such claims. Clarification on the following points would be helpful.

1. The use of conventional electricity along with the purchase and retirement of renewable energy certificates constitutes the use of renewable energy.

In the United States, the environmental attributes of grid-based renewable energy are generally tracked and sold through renewable energy certificates (“RECs”). A REC is an intangible commodity representing the environmental attribute associated with the generation of a megawatt hour of renewable electricity. The generation and delivery of renewable electricity in the U.S. electricity grid requires both the delivery of electricity and the delivery of a proportional quantity of environmental attributes through RECs. Many state regulators already institute this practice for renewable portfolio standards and consumer disclosure requirements. We recommend that the FTC clarify that sellers of RECs may advertise that they sell renewable energy, and that companies purchasing RECs have a reasonable basis to claim that they purchase and use renewable energy.³

2. Sellers of renewable energy and offsets must substantiate all express and implied claims about the environmental benefit of their products.

³ Consumer education on how the markets for power and renewable energy function in the United States may be appropriate, as RECs are frequently misconstrued in the media and may not be well understood by consumers in the United States.

Sellers of renewable energy and carbon offsets make express and implied claims about the environmental attribute of the products they sell, which they must be able to substantiate.

a. Claims about environmental attributes of renewable energy

We believe consumers understand that the renewable energy underlying their purchase is generated in an environmentally preferential manner, and that their purchase will contribute to market pull for new renewable energy. Sellers of renewable energy must be able to substantiate that RECs they sell are from renewable sources. The United States Environmental Protection Agency and the Green-e[®] Energy certification program both have consistent definitions for eligible renewable energy projects within the United States voluntary market.

*b. Substantiating claims about environmental attributes of offsets:
Demonstrating additionality*

A carbon offset represents a property right to claim ownership or responsibility for a quantity of greenhouse gas emissions avoided or removed from the atmosphere. Like a REC, a carbon offset is an intangible, fungible commodity that can be resold until it is retired (used) by an end user taking responsibility for (*i.e.* claiming) the avoidance or reduction of a quantity of greenhouse gas emissions. Programs such as the United Nations Clean Development Mechanism of the United Nations' Kyoto Protocol and the Green-e[®] Climate certification program recognize a wide spectrum of projects that can provide the basis for carbon offsets, including renewable energy projects, carbon sequestration, methane gas flaring projects, forestry projects, and many others.

Sellers of offsets must be able to substantiate through competent scientific evidence that the project(s) underlying their offsets caused greenhouse gas emission avoidances or reductions that are real, measured, permanent, verified, and additional. There is some debate as to the precise meaning and application of these terms, including the definition of and appropriate tests for additionality. This debate was reflected in the presentations given at and in comments submitted on the Workshop.

Some participants in the Workshop argued for a “performance-based” additionality test, whereby projects are deemed additional if they meet a threshold level performance, irrespective of the subjective motivation of the project developers. For example, the United State Environmental Protection Agency’s Climate Leaders Program utilizes such a performance-based additionality test for the United States electricity sector, and concludes that “constructing renewable energy facilities is considered ‘beyond business-as-usual’ and, therefore, additional.” *See* Climate Leaders, Project Type: Purchase of Green Power and Renewable Energy Certificates (RECs) (December 2007 discussion draft) at http://www.epa.gov/stateply/documents/greenpower_guidance.pdf. The Green-e[®] Climate Protocol on Renewable Energy allows projects to demonstrate

additionality through a performance standard similar to that adopted by the Environmental Protection Agency's Climate Leaders program.

Others argued that to serve as the basis for carbon offsets, projects must prove "financial" additionality, whereby sellers of offsets must show that an underlying project would not have been built without anticipated revenue from said offsets. Comments on the Workshop submitted by the Offset Quality Initiative describe the tradeoff between performance and financial additionality tests, and note that the financial additionality is difficult to administer because it requires a determination of the subjective motives of project developers. *See* Workshop Comments of Offset Quality Initiative, pp. 4-8.

Some Workshop commentators suggest that renewable energy projects will rarely satisfy financial additionality. For example the Workshop comments of EcoSecurities criticize the Green-e[®] Climate Protocol on Renewable Energy for not requiring projects to demonstrate financial additionality. However, financial additionality is not generally considered to be the only means of demonstrating additionality. For example, the United Nations' Clean Development Mechanism of the Kyoto Protocol provides guidance on acceptable tests for additionality, including the option (but not the requirement) that a financial additionality test be performed, and recognizes renewable energy projects as a legitimate basis for offset projects. *See* http://cdm.unfccc.int/methodologies/PAmethodologies/AdditionalityTools/Additionality_tool.pdf.

The FTC has stated that its focus is on claims by companies regarding the sale and purchase of offsets and renewable energy, and that resolving technical policy debates is beyond its scope and expertise. We believe it is unnecessary for the FTC to resolve policy debates, since offset sellers have a reasonable basis for claiming their offsets are additional so long as they satisfy widely (if not universally) accepted standards.

c. Response to comments submitted by the Offices of the Attorney General of Vermont and California regarding additionality:

Comments on the Workshop were submitted on behalf of the Offices of the Attorney General of the States of Arkansas, California, Connecticut, Delaware, Illinois, Maine, Mississippi, New Hampshire, Oklahoma, and Vermont (collectively the "Attorneys General"). We agree with the Attorneys General that conducting research into how consumers perceive RECs and offsets may assist the FTC in crafting *optimal* consumer protection policies (although we do not believe such research is a prerequisite to implementing effective policies).

We object, however, to the notion asserted by the Attorneys General that "the FTC must look to consumers—not stakeholders—to determine what additional criteria will be necessary to substantiate a 'carbon offset' certificate or marketing claims of 'carbon neutrality' made on the basis of the purchase of carbon offsets," or that "what matters most is consumer protection" in determining whether carbon offsets may be sold based

on renewable energy projects. *See* Workshop Comments of the Attorneys General pp. 2-3.

Additionality is a nuanced concept, designed to ensure that the purchase of carbon offsets bears a causal relationship with the reduction of greenhouse gas emissions. The concept has been under development since the Kyoto protocol was signed in 1997.

Notwithstanding the fact that the applications of precise definitions and tests for additionality to specific project types are not universally agreed upon, it would be inappropriate to alter the definition of this well-established concept based on the understanding of lay consumers.

Consequently, we do not agree that consumer perception is relevant to the determination of whether renewable energy projects (or any other class of projects) can serve as the basis for carbon offsets. The development of renewable energy projects reduces the emissions of carbon dioxide and other greenhouse gas emissions, irrespective of consumer perception.

Instead, we agree with the recommendation of the Attorneys General that to the extent consumers do not understand key features of the markets for RECs and offsets (including additionality), consumer education is the appropriate remedy.

3. Substantiating claims about exclusive ownership

Sellers of renewable energy and carbon offsets make an implied claim that the consumer receives exclusive rights to the environmental attribute or benefit of their purchase, *i.e.* that the attribute or offset is not double counted. Double counting occurs when the renewable attribute or offset is sold to more than one party. Double counting also occurs when a generator selling RECs for renewable energy it generates subsequently benefits directly or indirectly from the environmental attributes of that electricity (known as null power). We believe it would be particularly helpful for the FTC to include examples of double counting in the Green Guides.

4. Third-party verification and certification a means of substantiation

Third-party verification and certification provides sellers of renewable energy and carbon offsets with a reasonable basis to claim that their products (1) meet certain environmental standards and (2) are not double counted, so long as the certifying body uses competent scientific and accounting methodologies to verify these claims, and consumers have a reasonable basis to discover the standards and methods of the certifying body.

5. Companies must substantiate express and implied claims about their use of renewable energy or carbon impact

a. Substantiation of claims about renewable energy use

Companies claiming to use renewable energy must be able to substantiate that the renewable energy they purchase or generate onsite meets consumers' expectations of what constitutes renewable energy. Companies using renewable energy may accurately specify the type of renewable energy used or generated onsite, but failure to do so will not render otherwise truthful claims misleading.

Companies sometimes wish to state that a particular product was made or manufactured with renewable energy. Such claims are often placed on a product or its packaging. CRS believes that consumers understand a claim that a product is manufactured with renewable energy denotes that the product was manufactured or the parts were assembled in a facility using 100% renewable energy unless otherwise specified. An express or implied claim about the use of renewable energy on the packaging of a product will likely be interpreted as a claim about renewable energy used in manufacturing the entire product, not just the product package.

For example, the use of pictures of or symbols associated with renewable energy generation (such as pictures of windmills) on a company's advertising materials or products may be understood by consumers as an implied claim by that company that it uses, or that that product is made with, renewable energy.

b. Substantiation of carbon claims by companies

Many companies seek to make claims about their "carbon footprint," or "carbon neutrality" (or the carbon neutrality of a particular product or event). Reasonable consumers likely understand that a company making such an assertion has calculated its total carbon inventory (the quantity of carbon dioxide and other greenhouse gas emissions attributable directly or indirectly to the actions of that company) after taking reasonable steps to reduce its emissions, and then purchased an amount of offsets equal to (or greater than) its remaining emissions.

Companies sometimes characterize their purchase of renewable energy in terms of "offsetting" greenhouse gas emissions caused by their electricity use. This is generally acceptable, so long as the emission reduction value of the REC (using a ton per megawatt hour metric) is equal to or greater than the emissions associated with the electricity consumed.

III. CONCLUSION

In closing, CRS would like to thank the FTC for this opportunity to provide comments in these areas. We are very supportive of the FTC's consideration of consumer protection issues around renewable energy and carbon offsets. CRS relies on guidance from the FTC in our own consumer protection guidelines in the Green-e® Energy, Green-e® Climate, and Green-e® Marketplace programs.